

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LAUSTEVEION JOHNSON,

Plaintiff,

v.

A. NGUYEN, et al.,

Defendants.

Case No. 3:12-cv-00538-MMD-WGC

ORDER ADOPTING AND ACCEPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE
WILLIAM G. COBB

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (dkt. no. 92) ("R&R") relating to Defendants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, or in the Alternative, Motion to Enforce Settlement Agreement ("Motion") (dkt .no. 28). Defendant Cole Morrow filed a joinder to the motion (dkt. no. 35) and the court granted defense counsel's oral motion for defendant Eric Burson to join in the motion. (Dkt. no. 38.) No objection to the R&R has been filed.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a

1 magistrate judge's report and recommendation where no objections have been filed. See
2 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
3 of review employed by the district court when reviewing a report and recommendation to
4 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
5 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
6 view that district courts are not required to review "any issue that is not the subject of an
7 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
8 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
9 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
10 which no objection was filed).

11 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to
12 determine whether to adopt Magistrate Judge Cobb's R&R. Upon reviewing the R&R
13 and underlying briefs, this Court finds good cause to adopt the Magistrate Judge's R&R
14 in full.

15 It is therefore ordered, adjudged and decreed that the Report and
16 Recommendation of Magistrate Judge William G. Cobb (dkt. no. 92) is accepted and
17 adopted in its entirety. Defendants' Motion (dkt. no. 28) is granted in part and denied in
18 part. The Motion is denied as to the following claims:

19 (1) Eighth Amendment conditions of confinement claim against
20 defendants Renee Baker, Dr. Koehn and Dr. Rivas;

21 (2) Eighth Amendment excessive force claim against G. Holliday;

22 (3) First Amendment retaliation claim against Holliday;

23 (4) Fourteenth Amendment equal protection claim against Holliday;

24 (5) Eighth Amendment deliberate indifference to serious medical needs
25 claim against Holliday;

26 (6) Eighth Amendment deliberate indifference to serious medical needs
27 claim against defendants Baker, Dr. Koehn and Dr. Rivas;

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1 (7) Supervisory liability claims against defendants Jennifer Nash, Isidro
2 Baca, John Keast and G. Carpenter that are predicated on the alleged civil rights
3 violations committed by Holliday, Baker, Dr. Koehn and Dr. Rivas; and

4 (8) Eighth Amendment conditions of confinement claim against Baker,
5 Dr. Koehn and Dr. Rivas, including the claim that Plaintiff was forced to use toilet water
6 to bathe (since the Court rejects Defendants' argument Plaintiff failed to exhaust his
7 administrative remedies with respect to this claim based on Defendants' failure to
8 provide admissible evidence to support their argument).

9 The Motion is granted as to the following claims which are dismissed with
10 prejudice:

11 (1) Eighth Amendment excessive force claim against defendant A.
12 Nguyen;

13 (2) First Amendment retaliation claim against Nguyen;

14 (3) Fourteenth Amendment equal protection claim against Nguyen;

15 (4) Supervisory liability claims against defendants Nash, Baca, Keast
16 and Carpenter that are predicated on the alleged excessive force, retaliation and equal
17 protection violations by Nguyen; and

18 (5) Fourteenth Amendment due process claim against defendants
19 Dwight Neven, Cole Morrow, Bean and Burson.

20 The Clerk is instructed to enter judgment in favor of defendants Nguyen, Neven,
21 Morrow, Bean and Burson.

22 DATED THIS 27th day of March 2015.

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25 _____
26 MIRANDA M. DU
27 UNITED STATES DISTRICT JUDGE
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